

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Richard J. Klein,
Petitioner

vs

Case No. 1:01cv794
(Beckwith, J.; Black, M.J.)

Harold Carter,
Respondent

REPORT AND RECOMMENDATION

This habeas corpus action filed pro se pursuant to 28 U.S.C. § 2254 is before the Court on petitioner's motions for judgment on the pleadings (Doc. 56) and default judgment (Doc. 61), which are opposed by respondent (*see* Docs. 57, 62).

In both his motion for judgment on the pleadings (Doc. 56) and motion for default judgment (Doc. 61), petitioner essentially requests that a default judgment be entered against respondent and that he be granted habeas relief based on respondent's failure to submit a timely amended return of writ in response to petitioner's amended petition filed July 21, 2004. Respondent was granted an extension of time to December 16, 2004 in which to file the amended return of writ (*see* Doc. 58). The amended return of writ was filed within the time allowed on December 14, 2004. (*See* Doc. 63). It is therefore RECOMMENDED that petitioner's motions for judgment on the pleadings (Doc. 56) and for default judgment (Doc. 61) be DENIED.

Date: 1/19/05
cbc

s/Timothy S. Black
Timothy S. Black
United States Magistrate Judge

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NOTICE

Attached hereto is a Report and Recommendation issued by the Honorable Timothy S. Black, United States Magistrate Judge, in the above-entitled action. Pursuant to Fed. R. Civ. P. 72(b), any party may object to the Magistrate Judge's Report and Recommendation within ten (10) days after being served with a copy thereof. Such party shall file with the Clerk of Court and serve on all other parties written objections to the Report and Recommendation, specifically identifying the portion(s) of the proposed findings, recommendations, or report objected to, together with a memorandum of law setting forth the basis for such objection(s). Any response by an opposing party to the written objections shall be filed within ten (10) days after the opposing party has been served with the objections. *See* Fed. R. Civ. P. 72(b). A party's failure to make objections in accordance with the procedure outlined above may result in a forfeiture of his rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).